MOSCOW NARODNY BANK LTD

v.

NGAN CHING WEN

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
AHMAD FAIRUZ JCA
DENIS ONG JCA
[CIVIL APPEAL NO: W-03-6-1996]
30 AUGUST 2001

BANKRUPTCY: *Petition - Opposition to petition - Whether debtor challenged bankruptcy notice within permitted time - Whether notice of intention to oppose bankruptcy petition filed and served - Whether dismissal of bankruptcy petition proper*

BANKRUPTCY: *Petition - Abuse of process - Creditor accepting payments from debtor after commencing bankruptcy proceedings - Whether an abuse of process to use bankruptcy proceedings in the way of a judgment debtor summons to extract periodical payments from debtor - Whether an abuse of bankruptcy jurisdiction of High Court*

This was an appeal from the decision of the learned judge dismissing the appellant bank's bankruptcy petition against the respondent. The appellant submitted, *inter alia*, that the respondent had failed to challenge the bankruptcy notice within the time limited by the Bankruptcy Act 1967.

Held:
Per Gopal Sri Ram JCA

[1] The respondent had filed and served a notice of intention to oppose the bankruptcy petition. The learned judge was right in holding that this was sufficient. (p 643 b-c)

[2] The learned judge was also right in dismissing the bankruptcy petition on the ground that it was an abuse of process. The appellant had accepted payments from the respondent after commencing bankruptcy proceedings. It was using the bankruptcy court to extract payments from the respondent. This was an abuse of the bankruptcy jurisdiction of the High Court. It is an abuse of process to use bankruptcy proceedings in the way of a judgment debtor summons to extract periodical payments from a debtor. (p 643 f-h)

[Appeal dismissed; no order as to costs.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Ini adalah rayuan daripada keputusan hakim yang bijaksana menolak petisyen kebankrapan oleh bank perayu terhadap responden. Perayu telah berhujah, antara lainnya, bahawa responden telah gagal untuk mencabar notis kebankrapan tersebut di dalam lingkungan masa yang ditetapkan oleh Akta Kebankrapan 1967.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Responden telah memfailkan dan menyampaikan satu notis niat untuk membantah prosiding kebankrapan tersebut. Hakim yang bijaksana adalah betul dalam memutuskan bahawa ini adalah memadai.

[2] Hakim yang bijaksana juga betul dalam menolak petisyen kebankrapan tersebut atas alasan bahawa ianya adalah suatu penyalahgunaan proses. Perayu telah menerima pembayaran-pembayaran daripada responden selepas memulakan prosiding kebankrapan. Ianya menggunakan mahkamah kebankrapan untuk mendapatkan pembayaran daripada responden. Ini merupakan suatu penyalahgunaan bidangkuasa kebankrapan Mahkamah Tinggi. Ianya merupakan suatu penyalahgunaan proses untuk menggunakan prosiding kebankrapan menurut cara saman penghutang penghakiman bagi mendapatkan pembayaran berkala daripada penghutang.

[Rayuan ditolak; tiada perintah bagi kos.]

Case(s) referred to:
J Raju v. Commerce International Merchant Bankers Bhd [2000] 3 CLJ 104 ***(refd)***
Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533 ***(refd)***
Re United Marine Supply Co [1960] MLJ 305 ***(refd)***

For the appellant - P Pereira (G Shankar); M/s Skrine & Co
For the respondent - RR Sethu (YS Leong); M/s Low Hop Bing, Koh Kong & Assoc

[Appeal from High Court, Kuala Lumpur; Bankruptcy No: D4-29-3629-92]

Reported by Gan Peng Chiang

JUDGMENT

Gopal Sri Ram JCA:
This appeal raises a short point of bankruptcy law. It concerns the interpretation of certain provisions of the bankruptcy legislation. The point at issue has in fact been determined fairly recently by a judgment of this court. See, *J Raju M Kerpaya v. Commerce International Merchant Bankers Bhd.*

[2000] 3 CLJ 104. Further, the learned judge, in the judgment appealed against, has dealt with the issue in sufficient depth. I therefore find it unnecessary to say much here.

The appellant's principal complaint is that its bankruptcy petition was wrongly dismissed by the learned judge because the respondent had not challenged the bankruptcy notice within the time limited by the Bankruptcy Act 1967. However, as observed by the learned judge, the respondent had in fact filed and served a notice of intention to oppose the petition. The learned judge held this to be sufficient. I am in agreement with this finding. It is supported by the judgment of Rose CJ in *Re United Marine Supply Co* [1960] MLJ 305. The appellant's complaint about the respondent's failure to comply with the relevant statutory provisions is therefore without merit.

There remains one further matter. The sole ground on which the respondent resisted the petition was that there had been a complete accord and satisfaction of the debt on which the bankruptcy proceedings were based. The appellant complains that the learned judge found for the respondent on the point without sufficient investigation of the facts. I think that there is much force in this argument. There may or may not have been an accord and satisfaction as alleged by the respondent. It is an issue that called for resolution in other proceedings properly brought by the respondent. The judge ought not, in my view, to have expressed any concluded view on this issue in the absence of cogent evidence.

However, in the state of the evidence before him, the learned judge would have been perfectly entitled to dismiss the petition on the ground that it was an abuse of process. The appellant's own evidence warranted this. It is clear that the appellant had accepted payments from the respondent after commencing bankruptcy proceedings. The totality of the circumstances reasonably supports the inference that the appellant was using the bankruptcy court to extract payments from the respondent. That in my judgment amounts to an abuse of the bankruptcy jurisdiction of the High Court. The bankruptcy jurisdiction of the High Court is invoked on the ground that a debtor has committed an act of bankruptcy. The object of the exercise is to take the debtors financial affairs out of his hands and place them in the hands of the Official Assignee. It is certainly an abuse of process to use bankruptcy proceedings in the way of a judgment debtor summons to extract periodical payments from the debtor.

As I have said upon other occasions, the categories in which the court's process may be abused are not closed. See, for example, *Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 CLJ 533. The present instance is merely another illustration of the proposition.

In my judgment, the learned judge's decision is entirely correct and is supportable on the additional ground that I have adverted to a moment ago. It is true that the appellant is prejudiced by the finding made by the learned judge that there had been a complete settlement. But that is easily remedied by setting aside that part of the judgment and granting the parties liberty to institute appropriate proceedings to have that issue determined.

For these reasons the appeal was dismissed, with the variation to the judge's order to the extent indicated in the preceding paragraph of this judgment. In the particular circumstances of this case, we made no order as to costs and directed the deposit to be refunded to the appellant.